IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20329 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAMATBHAI PUNABHAI JHALANDRA - Petitioner(s)
Versus
MAMLATDAR, RAJULA & 3 - Respondent(s)

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Appearance :
MR DC SEJPAL for Petitioner(s) : 1,
MR SATYAM CHHAYA, AGP for Government
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 12/12/2006

ORAL JUDGMENT

1. Rule. Mr.Chhaya, learned AGP waives service of notice of Rule for the respondents. With the

consent of the learned Advocates for both the sides, the matter is finally heard today.

2. The question which arises for the consideration of this Court in the present petition is as to whether the Gujarat Revenue Tribunal has the jurisdiction under the Bombay Revenue Tribunal Act to entertain the appeal against the order passed by the Collector or his delegatee under Section 39A of the Bombay Land Revenue Code or not.

3. I have heard Mr.Sejpal, learned Counsel for the petitioner and Mr.Chhaya, learned AGP for the State Authorities.

4. It appears that the proceedings were initiated by the Mine Supervisor, Geological Department against the petitioner under Section 39A of the Bombay Land Revenue Code (hereinafter referred to as “the Code”). As per Section 39A of the Code, the powers are with the Collector, however, as per the communication dated 9.12.2006 received by the learned AGP from the Mamlatdar, Rajula, vide Notification No.RTPWR1056-150235A dated 25.1.1957 the powers

of the Collector are delegated to the Mamlatdar and, therefore, as the Mamlatdar, being the delegatee of the Collector under the Code, had powers and jurisdiction to entertain such proceedings, the application was made by the Mine Supervisor before the Mamlatdar, Rajula, which was registered as Case No.3/2004. The Mamlatdar conducted the proceedings and ultimately on 16.5.2005 the order was passed, whereby it was concluded by the Mamlatdar that the petitioner, who was defendant therein has extracted minerals unauthorisedly from the Government land reserved for gouchar and, therefore, value of Rs.67,280/- and the royalty of Rs.8,410/- was ordered to be paid to the Government. The said order of the Mamlatdar is produced at Annexure “A”.

5. It appears that against the order of the Mamlatdar, the petitioner preferred the appeal before the Collector under Section 203 of the Code, but he was communicated vide letter dated 31.5.2005 that the appeal was not maintainable before the Collector and the papers of the

appeal were returned. The petitioner thereafter approached before the Dy. Collector, Rajula and he received the communication dated 24.6.2005 from the office of the Dy. Collector that the appeal was not maintainable before the Dy. Collector. It appears that the petitioner thereafter preferred revision before the Gujarat Revenue Tribunal, but the petitioner was communicated vide letter dated 3.10.2005 that such revision was not maintainable before the Tribunal and, therefore, the revision was returned back to the petitioner. The petitioner also preferred appeal before the Additional Director, Geological Science and Minerals, Department of Government, but vide communication dated 9.1.2006, the petitioner was informed that the appeal was not maintainable before him and the appeal was returned back to the petitioner. It is under these circumstances the petitioner has approached this Court by preferring the present petition for challenging the order passed by the Mamlatdar under Section 39A of the Code.

6. The learned Advocates appearing for both the sides were heard on the contentions of the availability of alternative remedy as per the provisions of the Code read with the Bombay Revenue Tribunal Act, 1957.

7. There is no dispute on the point that the powers were exercised by the Mamlatdar under Section 39A of the Code. It is true that as per the language of Section 39A of the Code the powers are with the Collector and the decision as to the value of such natural products is made as conclusive. However, as recorded hereinabove, vide order dated 25.1.1957 of the State Government the powers are delegated to the Mamlatdar and, therefore, the Mamlatdar has exercised the power as delegatee of the Collector under Section 39A of the Code. Hence, the order passed by the Mamlatdar, impugned in this petition is under Section 39A of the Code being delegatee of the Collector.

8. As per the provisions of the Bombay Revenue Tribunal Act, 1957, the jurisdiction of the Revenue Tribunal is provided under Section 9,

which reads as under:

> *"**Sec.9 Jurisdiction of Tribunal**-.(1) Subject to the provisions of this section, the Tribunal shall have jurisdiction to entertain and decide appeals from and revise decisions and orders of officers, not below the rank of a Collector or Deputy Commissioner, in respect of cases arising under the provisions of the enactments specified in the First Sechedule.*
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> *(2) Save as expressly provided in any enactment for the time being in force the State Government may by notification in the Official Gazette, direct that the Tribunal shall also have jurisdiction to entertain and decide appeals from, and revise decisions and orders of, such persons, officers and authorities in such other cases as the State Government may determine; and for that purpose the State Government may, by notification in the Official Gazette, add to, amend or omit, any of the entries in the*

First Schedule, and thereupon the Tribunal shall have jurisdiction in such matter and the jurisdiction in such matter and the jurisdiction of any other person, officer or authority therein shall cease.

(3) The State Government may, at any time, in like manner, cancel such notification or omit any entry from the First Schedule, and resume to itself such jurisdiction:

Provided that nothing herein shall prevent the State Government after such resumption of jurisdiction from conferring any such jurisdiction on any other person officer or authority.

(4) Notwithstanding anything contained in any other law for the time being in force when the Tribunal has jurisdiction to entertain and decide appeals from and revise decisions and orders of, any person, officer or authority in any matter aforesaid, no other person, officer or authority shall have jurisdiction to entertain and decide

appeals from and revise decisions or orders of such person, officer or authority in that matter."

9. If the first schedule is considered, whereby item No.1 qua Bombay Land Revenue Code, it has been provided as under:

FIRST SCHEDULE

(See Section9)

	Name of enactment 1	Appellate or revisional jurisdiction against orders or decisions in cases arising under the following provisions 2
1	The Bombay Land Revenue Code, 1879 (Bom. V of 1879).	Section 37, sub-section(2) Section 39A. Section 43. Section 46. Section 47. Section 51. Section 61. Section 79A, except clause (b) thereof.
2	The Bombay Land Revenue Code, 1879 (Bom. V of 1879), as extended to the Kutch area of the State of Bombay.	Section 37, sub-section(2) Section 39A. Section 43. Section 46. Section 47. Section 51. Section 61. Section 79A, except clause (b) thereof.

	Name of enactment 1	Appellate or revisional jurisdiction against orders or decisions in cases arising under the following provisions 2
3	The Bombay Land Revenue Code, 1879 (Bom. V of 1879), as adapted and applied to the Saurashtra area of the State of Bombay	Section 37, sub-section(2) Section 39A. Section 43. Section 46. Section 47. Section 51. Section 61. Section 79A, except clause (b) thereof.
4	1[***]	
5	1[***]	
6	1[***]	
7	1[***]	
8	1[***]	
9	The Indian Forest Act, 1927 (XVI of 1927)	Section 11. Section 12. Section 15. Section 16.
10	The Indian Forest Act, 1927 (XVI of 1927), as adapted and applied to the Saurashtra area of the State of Bombay.	Section 11. Section 12. Section 15. Section 16.
11	1[***]	

10. Therefore, the appellate powers against the order or the decision of the authority under Section 39A of the Code are with the Gujarat Revenue Tribunal and under these circumstances, it appears that Gujarat Revenue Tribunal vide communication dated 3.10.2005, copy whereof is produced at Annexure “I” has wrongly returned

the revision to the petitioner, observing through the Registrar of the Tribunal that there is no jurisdiction with the Tribunal against the impugned order.

11. In view of the aforesaid provisions of the Bombay Revenue Tribunal Act, 1957 read with the Schedule, the jurisdiction vests to the Tribunal for hearing the appeal and/or revision. In the result the Tribunal has committed error of jurisdiction in declining to entertain the appeal against the order of the Mamlatdar under Section 39A of the Code as delegatee of the Collector.

12. As the matter is not examined on the other aspects of the order under Section 39A of the Code, the other contentions are not required to be examined by this Court at this stage. Considering the facts and circumstances, the matter deserves to be relegated to the Tribunal for deciding the same on its merits.

13. In view of the above, I find that the following directions shall meet with the ends of justice:

(a) The petitioner shall prefer appeal

against the order passed by the Mamlatdar under Section 39A of the Code, which is impugned in this petition within a period of four weeks from today.

(b) The Tribunal shall decide the appeal on merits and in accordance with law. It would also be open to the petitioner to move for interim stay pending the final decision of the appeal before the Tribunal.

14. The petition is allowed to the aforesaid extent. Rule partly made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

12.12.2006 **(Jayant Patel, J.)**

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